

EXHIBIT D

1 fenofibrate litigation, which was a much more complex
2 Hatch-Waxman case, as you remember, numerous patents,
3 numerous claims.

4 THE COURT: I remember but I didn't have 13
5 defendants. However, having said that, I take your point.
6 Now, this was my effort to put things together but, you
7 know, Mr. Rakoczy, you're right to raise this with me
8 because I wasn't focused on this issue in the manner that
9 it probably deserved.

10 Here is what I'm going to ask you folks to do.
11 A lot of what we've addressed here I have addressed in a way
12 that should give you an understanding of what I expect this
13 final order to look like. I'll ask you to take this set of
14 dates and compress this another five months so that we're
15 looking at a two-year track instead of a 29-month track; a
16 two year track, putting us to trial -- and that's 29 months,
17 as you say. I think I'm getting us to trial pretty close to
18 two years. That's November of 2007.

19 MR. PAPPAS: You are, Your Honor. That's
20 24 months.

21 THE COURT: Well, not quite. It's a little
22 more than that. We're in early October here. So if you
23 want to take that, I was using your numbers. If you want
24 to take that and knock a couple months of it so we're
25 hitting trial in September or October, I can live with that.

1 I don't want to take the plaintiffs below
2 a couple of years because I do think that they have
3 infringement issues that may very well be different for
4 different defendants.

5 If you folks are successful in cooperating
6 discovery in a manner that brings this thing in sooner,
7 that's great. The good thing about a bench trial is I have
8 the flexibility to, if you folks have the flexibility, to
9 plug you in earlier if I find a gap in my schedule and I'm
10 perfectly amenable do that. If everybody comes to me at
11 our first status conference and says, "Judge, cooperation
12 amongst the defendants is excellent. Cooperation between,
13 the sides is productive. We think we can bring this in
14 sooner." I will move that trial date up further, if it's at
15 all possible.

16 But given not the complexity of the substantive
17 issues from what I can tell, because from what I can see,
18 it doesn't look complex, it does look like we're talking a
19 couple of claims on a pharma patent. I'm delighted to hear
20 people talking about being able to do this two weeks. You
21 know what? If there is the kind of cooperation you guys
22 are indicating you could have, I'd agree we could do it in
23 less than two weeks and I'd be happy to do that. I'm not
24 prepared in the abstract, though, to assume that I'm going
25 to see that kind of cooperation.

1 Since I'm not prepared to assume it, I'm going
2 to build into the schedule what I think is an appropriate
3 amount of time to deal with the fighting that often develops
4 in these cases. So if you think that mid November pushes
5 you too far to the wall, you want to give me something that
6 moves it back to the beginning of October, I'm good with
7 that.

8 Here is what you need to do, though. You need
9 to cut back on your own time and not on my time to decide
10 your dispositive motions. Do you see what I'm saying?

11 MR. RAKOCZY: Yes, Your Honor.

12 THE COURT: So discuss that with yourselves,
13 take the information I have given you and then please send
14 me something that everybody is on board with. And if
15 anybody isn't on board, you better make sure you get your
16 own letter in within 24 hours of everyone else's letters
17 hitting because what is going to happen, I'm not going to
18 call people together again, I'm just going to take what I
19 get and I'm going to enter a scheduling order based on our
20 discussions and what you submit. Okay?

21 MR. RAKOCZY: Absolutely, Your Honor. When
22 would you like the new set of dates by?

23 THE COURT: Well, how long do you think it will
24 take you folks to discuss this? I mean I would expect I
25 ought to get something from you in a week or less. Don't